

subtype 10a,

(iii) or the complement of the polynucleic acid of (i) or (ii).

Concluded

65. (Amended) A polynucleic acid which is selected from:

(i) a polynucleic acid encoding an HCV polyprotein comprising an amino acid sequence selected from the group consisting of SEQ ID NOs: 52, 138, 155, 174, 190 and 207,

(ii) a part of said polynucleic acid of (i) which is unique to HCV type 10, or, to the subtype 10a,

(iii) or the complement of the polynucleic acid of (i) or (ii).

REMARKS

Reconsideration is requested.

Claims 63-70 are pending.

Claims 64 and 65 have been amended above without adding new matter.

Support for the amendment to claim 64 may be found, for example, at page 27, lines 5 and 8 of the specification. Support for the amendments to claim 65 may be found on page 5, line 18; page 6, lines 3 and 20; and page 7, lines 2 and 16, for example of the specification. The recitation of SEQ ID NO: 50 in claim 65 has been corrected to recite SEQ ID NO:52. An amino acid sequence encoded by SEQ ID NO: 51, of claim 63, for example, is SEQ ID NO: 52.

The Examiner will appreciate that claim 63 is directed, in part, to a nucleic acid sequence having the sequences of SEQ ID NO:51. SEQ ID NO:51 is a nucleic acid sequence. SEQ ID NO:52 is an amino acid sequence encoded by the nucleic acid sequence of SEQ ID NO:51. Accordingly, the subject matter of claim 65, as it relates to SEQ ID NO:52, is defined by SEQ ID NO:51, as recited in claim 63.

Moreover, the Examiner will appreciate that the recitations of SEQ ID NOs: 138, 155, 174, 190 and 207 is directed to segments of the amino acid sequence of SEQ ID NO:52, also recited in claim 65. Specifically, SEQ ID NO:138 is amino acids 33-48 of SEQ ID NO:52; SEQ ID NO:155 is residues 54-64 of SEQ ID NO:52; SEQ ID NO:174 is residues 71-83 of SEQ ID NO:52; SEQ ID NO:190 is residues 89-98 of SEQ ID NO:52; and SEQ ID NO:207 is residues 135-144 of SEQ ID NO:52. A search of claim 63 which includes the nucleotide sequence of SEQ ID NO:51 would appear to require a search of the subject matter of claim 65, i.e., a nucleotide sequence encoding, for example, SEQ ID NO:52.

SEQ ID NO:52 is an amino acid sequence encoded by the nucleotide sequence of SEQ ID NO:51. A search of the subject matter of the Examiner's Groups I and III therefore are believed to be coextensive.

The applicants appreciate the Examiner's comment in paragraph 3 on page 2 of the Office Action of September 20, 2002 (Paper No. 8), noting the typographical error in claim 65 wherein SEQ ID NO:50 was referred to as opposed to the corrected SEQ ID NO:52. The Examiner's basis therefore for the restriction requirement stated in paragraph 3 of Paper No. 8 is moot in view of the above amendments.

More importantly, the Examiner only indicates a basis for requiring restriction between the subject matter of Groups I and III in paragraph 3 of Paper No. 8 and fails to support the requirement for a restriction requirement between the subject matter of the other identified Groups.

Reconsideration and withdrawal of the restriction requirement therefore are requested.

The restriction requirement is further improper due to the fact that the subject matter of claims 63 and 65, as well as all the pending claims, has been allowed in the parent application, without requiring restriction between the separate claims. See, the attached copy of the claims of U.S. Patent No. 6,180,768, wherein SEQ ID NO:51 of the pending claim 63 is recited in the allowed claim 2; the amino acid residues recited in the pending claim 64 are recited in the allowed claim 3 and SEQ ID NO:52 of the pending claim 65 is recited in the allowed claim 4. Moreover, the subject matter of the pending claims 66-70 are believed to be found in the previously allowed claims 7-11 of U.S. Patent No. 6,180,768. Accordingly, the pending claims are submitted to be allowable and, as the subject matter has been previously examined by the Patent Office in one application, the restriction requirement of September 20, 2002, should be withdrawn.

In the event the Examiner refuses to withdraw the restriction requirement, a new restriction requirement or a further paper correcting the record are requested as the following errors in the Office Action of September 20, 2002, are noted.

Claim 68 has not been included in any of the indicated Groups of subject matter. It is submitted that claim 68 should be included in all of the indicated Groups;

The Examiner's characterization of the subject matter of Group I as being a polynucleic acid molecule encoded by SEQ ID NO:51 is incorrect as SEQ ID NO:51 is a nucleic acid sequence. The applicants note, again, that SEQ ID NO:51 encodes SEQ ID NO:52, as stated in claim 65. The applicants urge the Examiner to appreciate that claim 65 relates to the same polynucleic acids as claim 63.

As noted above, the Examiner has not provided a sufficient basis in, for example, paragraph 3 of Paper No. 8 as to how each of the separate Groups of subject matter are patentably distinct one from the other.

The Examiner has classified essentially the same nucleic acid sequence in each of classes 424, subclass 186.1; class 424, subclass 228.1 and class 536, subclass 23.1. See, page 2 of Paper No. 8. Even if the Examiner's classification is correct, the applicants submit that the search of two subclasses within class 424 (i.e., subclasses 186.1 and 228.1) should not create an undue burden on the Examiner. More importantly, the applicants believe that class 424 relates to "drug, bio affecting and body treating compositions" while class 536 is believed to relate to "organic compounds". The applicants believe this separate classification is inappropriate and should be withdrawn as a basis for the restriction requirement, especially in view of the claims of the parent U.S. Patent No. 6,180,768, wherein the Patent Office has already conducted a search of all the claimed subject matter in class 435, subclasses 5, 7.1 and 320.1; class 435, subclasses 69.3 and 252.3; class 530, subclasses 300, and 350; and class 536, subclasses 23.1, 23.7 and 24.3, assuming the undersigned has correctly interpreted the attached first page of U.S. Patent No. 6,180,768.

Although the method of claim 67 is grouped together with the subject matter of the HCV polynucleic acids, the product of the method and amino acid sequences encoded by the nucleic are not. This is contrary to the Patent Office's previous treatment of this subject matter, as evidenced by the allowed claims of U.S. Patent No. 6,180,768. The applicants submit that the structure of the polypeptides of the invention is dictated by the structure of the polynucleic acids, as believed to be recognized by the Examiner in her grouping of the subject matter of claim 67 together with the subject matter of any of claims 63, 64 or 65. Clarification is requested in this regard in the event the restriction requirement is maintained.

The Examiner is urged to appreciate that although written in independent form, the HCV polynucleic acid molecules of claim 64(i) describes sequences of SEQ ID NO:51, such as recited in claim 63, which includes sequences also of claim 65. Accordingly, the subject matter of claims 63, 64 and 65, which is the basis for the Examiner's restriction requirement of separate Groups I to III, is believed to define a single invention and withdrawal of the restriction requirement is requested.

The restriction requirement should be withdrawn, all the claims should be examined together and a Notice of Allowance should be issued as the claimed subject matter has been previously allowed in U.S. Patent No. 6,180,768.

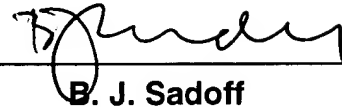
For the purposes of being responsive only, the applicants elect, with traverse, the subject matter of Group I. Reconsideration and withdrawal of the restriction requirement are however requested.

Maertens et al
S rial No. 09/851,138

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



B. J. Sadoff

Reg. No. 36,663

BJS:plb
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims

64. (Amended) A polynucleic acid which is selected from:

(i) a polynucleic acid encoding an HCV polyprotein comprising in its amino acid sequence at least one of the following amino acid residues; L186, [I192, S232, N244,] G217, C252, A254, G290, W293, H295, with said notation being composed of a letter representing the amino acid residue by its one-letter code, and a number representing the amino acid numbering as shown in Table 1,

(ii) a part of said polynucleic acid of (i) which is unique to HCV type 10, or, to the subtype 10a,

(iii) or the complement of the polynucleic acid of (i) or (ii).

65. (Amended) A polynucleic acid which [according to claim 63, wherein the polynucleic acid] is selected from:

(i) a polynucleic acid encoding an HCV polyprotein comprising [the] an amino acid sequence[s having SEQ ID NO:50] selected from the group consisting of SEQ ID NOs: 52, 138, 155, 174, 190 and 207,

(ii) a part of said polynucleic acid of (i) which is unique to HCV type 10, or, to the subtype 10a,

(iii) or the complement of the polynucleic acid of (i) or (ii).